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No. 81-89

In The

Supreme Court of the United States

October Term, 1980

WALTER ZANT, WARDEN,
Petitioner,

vs.

ALPHA OTIS O'DANIEL STEPHENS,
Respondent.

On Petition for Writ of Certiorari to The United States Court of Appeals For the Fifth Circuit

BRIEF AMICUS CURIAE OF THE STATE OF MONTANA IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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The State of Montana, by and through its Attorney General, Michael T. Greely, appears on behalf of its citizens and files this brief pursuant to Rule 36 of the Rules of this Court.

INTEREST OF THE STATE OF MONTANA IN THE RESOLUTION OF THE SUBSTANTIAL FEDERAL QUESTION PRESENTED

Montana law provides for imposition of the death penalty when a person is convicted of the offense of

deliberate homicide or aggravated kidnapping if the sentencing authority finds "one or more" of seven statutorily enumerated aggravating circumstances and finds that there are no mitigating circumstances sufficiently substantial to call for leniency. Sections 46-18-301 through 46-18-310, MCA. Three persons are under sentence of death in Montana at the present time and in each case the constitutionality of one or more aggravating circumstances has been challenged before the Montana Supreme Court. Resolution of the question presented in this case will have a substantial impact on Montana law because Montana law is sufficiently similar to Georgia's that the question presented in the petition can arise in Montana.

ARGUMENT

This Court should resolve the direct conflict presented in this case between the Georgia Supreme Court and the Fifth Circuit Court of Appeals. Resolution of the substantial federal question presented here will reach far beyond the boundaries of the State of Georgia or the Fifth Circuit because of the number of states, including Montana, that have, to a greater or lesser extent, patterned their laws relative to imposition of the death penalty on Georgia law following this Court's decision in *Gregg v. Georgia*, 428 U. S. 153 (1976).

Furthermore, this Court's decision in *Godfrey v. Georgia*, 446 U. S. 420 (1980), in which a statutory aggravating circumstance previously approved in *Gregg*, supra, was found to have been applied unconstitutionally, has resulted in renewed attacks on Montana's aggravating

circumstances. If one of these claims is found to have merit under *Godfrey,* supra, Montana will be faced with the exact question presented in the petition along with the conflicting decisions of the Fifth Circuit and the various state courts that have considered it. Additional litigation, in an area of the law already overburdened with protracted litigation, can be avoided by the prompt consideration and resolution of the issue presented in this petition.

CONCLUSION

Montana supports the Petition for Writ of Certiorari of petitioner in this cause and for the reasons expressed above, Montana urges the Court to grant certiorari and review the opinion and judgment of the court below.

Respectfully submitted,

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